=))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6586 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAYBHAI VASANTBHAI KADAM

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6586 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 18-11-2003. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases pending against the petitioner. All these cases are registered under Bombay Prohibition Act. The detaining authority has also recorded statements of two witnesses. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Ms.Banna Dutta, learned advocate for the petitioner submitted that though other points are available, she is confining her argument only qua delay in deciding representation of the petitioner. She submitted that the cases registered against the petitioner can, at the most, be said to be the cases of breach of law and order and not of public order. She further submitted that the petitioner has made a representation on 17-4-2004 to the State Government, which was received by the State Government on 19-4-2004. She has also produced Registered Post A.D.slip to support her say, which is taken on record. It is submitted by her that the said representation of the petitioner is decided on 29-4-2004, therefore, there is a delay of ten days in deciding the representation of the petitioner.

3) To substantiate her say, the learned advocate for the petitioner has relied upon a decision of this Court in NARAYAN TUKARAM BADDI v. State of Gujarat & Ors. reported in 1996 (1) GLR 31, wherein on the ground of unexplained delay in considering the representation, this Court has set aside the detention order. In the aforesaid case, the Court was concerned with a case wherein the petitioner was detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The detenu therein made a representation, which was disposed of after a considerable delay and delay was not satisfactorily explained. This Court held that the authorities may act with utmost promptness in disposing of the representation. While quashing the detention order passed against the detenu, this Court held that right is guaranteed to every detenu of making representation at the earliest opportunity against the order of detention and as a necessary corollary by using words "as soon as may be" in Article 22 (5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenu

of the grounds of detention is reflected. This Court further observed that once the earliest opportunity is provided to make a representation against the order of detention, correspondingly, there is a constitutional obligation for the speedy and expeditious consideration of such representation by the authority. This Court further held that utmost promptitude, expedition and diligence is expected from the authority to consider such representation. Even though no time limit is prescribed for the purpose of deciding representation, any indifference, avoidable delay or remissness on the part of the authority in considering the representation would vitiate the continued detention of the detenu.

4) On the other hand, Mr.Kogje, learned AGP, has submitted that so far as the aspect of delay in deciding representation is concerned, it is not possible to controvert the same. Apart from that, even no reply is filed by the respondent-authority and the delay in deciding representation of the petitioner has remained unexplained. In that view of the matter, since the representation of the petitioner is not dealt with forthwith, this petition is required to be allowed. As further detention of the petitioner would be violative of Article 22 (5) of the Constitution of India, the same is held to be illegal.

5) In view of above discussion, this petition is allowed. The continued detention of the detenu is held to be illegal and the detenu, Sanjaybhai Vasantbhai Kadam is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
/malek